ONE HUNDRED AND FIFTH

GENERAL ASSEMBLY OF THE PRESBYTERIAN CHURCH

In the United States of America,

WASHINGTON, D. C., MAY, 1893.

THE PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA,

APPELLANT,

AGAINST

THE REV. CHARLES A. BRIGGS, D.D.,

APPELLEE.

APPELLANT'S ARGUMENT BEFORE THE GENERAL ASSEMBLY IN SUPPORT OF THE MOTION TO ENTERTAIN THE APPEAL, MAY 25TH, 1893.

Argument of

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34 CORTLANDT ST., NEW YORK.

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Appellant's Argument before the General Assembly in Support of the Motion to entertain the Appeal, May 25th, 1893.

Moderator, Fathers and Brethren :

All the preliminary questions involved in this case were fully discussed and determined by the General Assembly of 1892.

Among the questions thus determined are the following :

1. That the appeal was taken by the Presbyterian Church in the United States of America, as an original party.

2. That the original party is represented by the Prosecuting Committee.

3. That such committee is a Prosecuting Committee appointed under Section 11 of the Book of Discipline.

4. The original party, by its Prosecuting Committee, has the right in this case, to take such an appeal from the Presbytery directly to the General Assembly.

5. That such an appeal is regular and in order.

Under a strict interpretation of the Constitution and the precedents established by the General Assembly, as the Supreme Court of our Church, these and some other questions passed upon by the last Assembly are *res adjudicata* and should not be again discussed.

The law of the Presbyterian Church is, that it is not competent for one General Assembly to *revise* or *review any proceedings* of a previous Assembly taken *in a judicial case.* (See Appeal of Lowry, Minutes, 1824, page 115, Case of Worrell, Minutes, 1864, page 398.)

I must take a few minutes of your valuable time, to deal with the technical points raised by the Appellee.

The Appellee's argument that the Appellant must prove himself an aggrieved party, though brilliant in detail and interesting in method, was wholly irrelevant, as he himself frankly stated at the outset. In the new Book of Discipline, he tells us, the term "original party" replaces that of "aggrieved party" in the old Book. It is fair to presume that this change was made designedly, but in any event the revised Book says nothing of the "aggrieved party." Section 94 of the new Book gives the right of appeal to "either of the original parties," and gives it as an unquestioned constitutional right.

The Appellee enunciated a strange principle when he informed us that a decision in a judicial case is not a decision as to doctrine. He intimated that litigation does not lead to final interpretation of law. Granting that this court cannot give a final interpretation, nothing could be easier or simpler than for this Assembly, in its legislative capacity, by deliverance, to affirm the decision made by the Assembly as a Court. But the general statement is erroneous. The Supreme Court of the United States, by the Constitution, is

made the final interpreter of the Constitution. Cases are constantly carried thither to secure a definitive and final interpretation. The General Assembly is made the final interpreter of our Constitution. It has almost invariably refused to decide principles, *in thesi*, requiring a concrete case upon which to render a decision. True, the General Assembly, like the United States Supreme Court, may err; but its decision, like that of the United States Supreme Court, is final, is law, and must be submitted to.

The Appellee said that the decision of the New York Presbytery does not bind the Church. True; but if ignored it will bind the Church, for it permits the doctrines alleged to be heretical, to be preached within the bounds of that Presbytery without rebuke. We are not Congregationalists; we are Presbyterians. The New York Presbytery is not like the Manhattan Congregational Association; it is a part of the one great Church, whose representatives are assembled here. Its decisions, touching doctrine, affect the whole Church from the Atlantic to the Pacific.

The ingenious argument of the Appellee respecting the use of the terms "decision" and "final judgment" in the title of the appeal has very little to do with the case. In so far as the term "final judgment" is concerned, it matters not whether it be confined to the mere assertion of acquittal, or be extended, as the Presbytery evidently intended, and as the Committee of Prosecution thinks it should be, to cover the whole judgment rendered and recorded as the judgment of the New York Presbytery on January 9, 1893. In this discussion by the Appellee, Section 95 of the Book of Discipline was not read to you. That section gives, among other grounds of appeal, the following: "Hastening to a *decision* before the testimony is fully taken, and mistake or injustice in the *decision*." All that portion of the appeal against which the Appellee pro-

tested so earnestly is relevant. While the appeal itself, as you will see from page 4 of the printed record placed in your hands, is from the final judgment only, yet according to Section 95, all errors, all actions in any portion of the proceedings from their inception, to the record of the final judgment, are proper grounds for appeal. By reference to the printed record, pages 160 and 163, you will see that the entire report of "the Committee appointed to bring in the result of the vote and the judgment of the Judicatory" was accepted, adopted in its several parts, then as a whole, and that on the 9th day of January, 1893, the report was declared to be the judgment of the court, and was entered accordingly.

After glancing at the minutes of the meeting of the Presbytery of New York, held on December 30, 1892 (printed record, pages 137-8), a meeting from which, under the provisions of Section 23 of the Book of Discipline, the parties and all other persons not members of the body were excluded, you will see that the acts there recorded do not fix the time, from which the ten days for giving notice of appeal under Section 96 runs. The minutes do not indicate that the result of the vote was made known; it is not recorded as a part of the proceedings of the meeting. A committee was appointed to bring in the result of the vote and the judgment of the Judicatory. The parties were again admitted to the Judicatory on January 9th, after the report of the Committee had been read, accepted, adopted, and entered upon the minutes as the final judgment of the Judicatory (printed record, pages 160, 163, 164). The parties were then re-admitted to the court, and the final judgment, as entered, was made known to them.

Section 96 of the Book of Discipline provides that "Written notice of appeal, with specifications of the errors alleged, shall be given within ten days after the judgment has been rendered." Within ten days after

the judgment was entered in this case and made known to the parties, written notice of appeal was given.

In view of these facts, I ask, is it frank, is it fair, is it candid to suggest that this appeal was not taken in due time? However, this quibble, raised by the Appellee, is not relevant or material now, for both the majority and minority of the Judicial Committee have reported the appeal to be in order, and this Assembly has already—

"*Resolved*, That the General Assembly finds that due notice of the appeal in this case has been given, and that the appeal and specifications of the errors alleged have been filed *in due time* and *that the appeal is in order* in accordance with the provisions of the Book of Discipline."

I should not have taken a second of your time with these details, but I felt it was necessary to show how irrelevant to the question now before the house, was the long discussion of preliminary points, with which the Appellee favored us during the afternoon session of yesterday, all of which points have been definitely settled in this case by this or the last Assembly. Most, if not all, of these preliminary questions discussed by the Appellee yesterday are now *res adjudicata in this case*, and should not engage your attention for a moment.

But as the Appellee in this case, has persistently urged the contrary view, in all the Courts of our Church, out of abundant caution and so that no duty towards the Church at large, which the Prosecuting Committee represents, may be neglected or overlooked, the following considerations are presented.

Preliminary Suggestions.

The Judicial Committee and the minority thereof, having reported that the Appeal of the Presbyterian

Church in the United States of America, Appellant, against the Rev. Charles A. Briggs, D. D., Appellee, is in order, the only question now before the Assembly, sitting as a Court, is whether the Appeal shall be entertained.

This is a technical legal question which the members of the Assembly must determine by bringing their intelligence and common sense to bear, in the interpretation of a few clearly expressed sections of the Book of Discipline and of the Form of Government of the Church.

These sections now to be referred to, do not contain words of double meaning, nor do they leave any one who studies them, in uncertainty as to what was meant by the persons who drafted the sections referred to, or by those who voted to make them a part of the Constitution of the Presbyterian Church in the United States of America.

Every Minister and Elder, a member of this Assembly, at the time of his ordination, solemnly asserted that he approved of the Government and Discipline of the Presbyterian Church in the United States.

The time has come, when, as Commissioners representing your respective Presbyteries, you are brought face to face with a great crisis in the affairs of our Church. And it behooves each one to give full weight and consideration to the obligation assumed, when that ordination vow was taken, and without fear or favor, to see to it that his duty in this behalf is fully performed.

The proceedings now to be taken in this case must be conducted under the provisions of two or three sections of the Form of Government, and a few sections of the Book of Discipline.

The Book of Discipline.

This Book of Discipline has been part of the Consti-

tution of the Presbyterian Church for nearly ten years, and is the controlling statute which determines what is constitutional and what is or is not lawful, in the procedure with which we are now to deal. This Book of Discipline was not adopted by the Presbyterian Church to cover this case, or any particular case, but its provisions are to be applied in exact equity and fairness to all cases where the power of discipline may be invoked, to secure the results which the 2d section of the Book of Discipline so well describes as follows: "2. The ends of Discipline are the maintenance of the "truth, the vindication of the authority and honor of "Christ, the removal of offences, the promotion of the "purity and edification of the Church, and the spiritual good of offenders."

Attempts to Discredit the Book.

It has been popular of late, in certain quarters, to cast reflections upon this Book of Discipline and to discredit it. Whether its provisions have been wisely or unwisely adopted we need not now discuss. It is the law of the Church, which must control in all matters of discipline. Even if some of its provisions should seem unwise, to those who are not likely to be satisfied with the results which naturally follow from a clear, definite and logical enforcement of the same, yet it is a part of the Constitution of our Church. Those who still honor and respect that Constitution, and their obligation to it, assumed when they took their ordination vow, will, I am sure, give their voices and votes in favor of a proper enforcement of its provisions.

The Old Book and Precedents thereunder are no longer Authoritative.

It should be understood from the first, that the provisions of the old Book of Discipline, in so far as they have not been re-enacted in the new Book, and the

precedents based thereon, have at this time, no force or effect whatever as law or precedents in the Courts of our Church.

Plan and Purpose of the Revised Book.

The intention of the committee, which so deliberately and skillfully drafted the present Book of Discipline, is perfectly evident to those who study its provisions, carefully and without prejudice. That committee began its labors in 1878, and continued the study and work of preparation until the Assembly of 1884. The idea of the Committee was to make the enforcement of discipline effective, and at the same time, by the provisions of the Book, to discourage unnecessary or litigious proceedings. The plan evidently was to do away with the undesirable and often irresponsible charges which arose under the Common Fame clause of the old Book.

As former trials had in more than one instance aroused strong personal feeling among members of the same Presbytery, it was determined, if possible, to prevent the recurrence in the future of such a condition of affairs.

To remove the personal element as far as possible, it was provided by Sections 6 and 10 of the Book of Discipline that when a judicatory finds it necessary for the ends of discipline to investigate an alleged offence and when the prosecution is initiated by a judicatory, as in this case, the proceedings shall be instituted in the name of the Presbyterian Church in the United States of America and that the Church at large *shall be* the prosecutor and an original party.

To place the proceedings on the highest possible plane, the plan of the Book was to make all of the members of the judicatory sitting as a Court, Judges, in the highest and best meaning of that term. They were not to be advocates or partisans. Provision was

also made in Section 11 that when the prosecution is initiated by a judicatory, a committee, known as the Prosecuting Committee, shall be appointed to conduct the prosecution in all its stages, in whatever judicatory, until the final issue be reached. The members of such a committee, when appointed, are, by that act, removed from the body of the Court, as Judges. Like the minister or elder who may prepare or exhibit the cause of the accused, they are not permitted to sit in judgment in the case.

The intention of these provisions of the Book of Discipline was evidently to place the members of a judicatory sitting as a Court, in a purely judicial attitude, and to preclude any one who might exhibit prejudice or undue zeal, because of his activity in conducting the prosecution, from participating in any way in the decisions of the Court.

The Provisions of the Book Safeguard and Protect all Interests.

The result of this is that the interests of every minister, officer and member of the Church, subject to discipline under the provisions of the Book, are protected in the most careful way, and proceedings are not so likely to be instituted by individual prosecutors as under the old Book. If, however, proceedings are instituted by a judicatory, and it finds, after an examination by a special committee, that it is necessary for the ends of discipline to investigate the alleged offence, every possible safeguard and protection has been thrown about the interests of the parties concerned.

The Book of Discipline of the Presbyterian Church is a part of its Constitution. All ministers and officers of the Church, by their ordination vows have approved of and accepted it as such and have committed them-

selves to its support and enforcement. When we know what the provisions of the Book are and apply them to the facts of a particular case, every member of this Assembly should be able to reach a wise and just conclusion, and to determine what his duty is under the circumstances.

The Book of Discipline, Sec. 94, provides as follows:

"An Appeal is the removal of a judicial case, by a "written representation, from an inferior to a superior "judicatory; and may be taken, by either of the "original parties, from the final judgment of the "lower judicatory. These parties shall be called "Appellant and Appellee."

No question has been raised or can be raised as to the fact that the judgment entered in this matter by the Presbytery of New York, on January 9, 1893, and now appealed from, is the final judgment of the lower judicatory in this case. This having been determined, and the fact is, I believe, unquestioned, the only other important point in this section, requiring attention at this time, is whether the appeal has been taken by either of the original parties.

Original Parties.

To learn who are the original parties we must turn to Section 10 of the Book of Discipline, which is as follows: "10. When the prosecution is initiated by a "judicatory, the Presbyterian Church in the United "States of America shall be the prosecutor, and an "original party; in all other cases, the individual pros- "ecutor shall be an original party."

Such an investigation was made in this case by a special committee. It made a full examination and report, which was discussed in Presbytery. The recommendations of the committee were adopted, and a judicial investigation was ordered, before the Prose-

cuting Committee had been appointed. There is no question as to who is the original party. This section (10) makes it mandatory that the Presbyterian Church in the United States of America *shall be* the prosecutor and an original party.

Prosecuting Committees.

Within the bounds of a Presbytery which is sitting in a judicial capacity, the Church at large can act only through a committee or as represented by a committee. This fact was taken into account in preparing the Book of Discipline, and provision was made therefor, in Section 11, as follows:

"When the prosecution is initiated by a judicatory, "it shall appoint one or more of its own members a "Committee to conduct the prosecution in all its "stages in whatever judicatory, until the final issue be "reached; *provided,* that any appellate judicatory "before which the case is pending shall, if desired "by the prosecuting committee, appoint one or more "of its own members to assist in the prosecution, "upon the nomination of the prosecuting committee."

The provisions of this section are also mandatory. It does not say that the judicatory may in its discretion, or if necessary appoint, but it is emphatic and declares that it *shall* appoint a committee to conduct the prosecution, in *all* its stages, in *whatever* judicatory, *until* the final issue be reached.

Notice, here, that this is not a temporary committee, to be quickly created and quickly discharged. Such a committee is, in no sense, a "Judicial Committee" to digest and arrange papers, etc., such as is provided for by Rule XLI. of the General Rules for Judicatories, the members of which may sit and vote in the case in which they act. The prosecuting committee provided for by Section 11 of the Book of Discipline cannot be appointed until the prosecution has been initiated

by a judicatory. And this, as provided in Section 6, must be after the judicatory has found it necessary for the ends of discipline to investigate the alleged offence.

Status of the Prosecuting Committee.

Throughout the conduct of this case the position of the Prosecuting Committee has been attacked. Although the status of the Committee was fully and finally determined by the last General Assembly, this question has been again raised by the Appellee, in his argument in opposition to the entertainment of the Appeal.

Under these circumstances it becomes important that the members of this Assembly should have a complete understanding of what the Presbytery of New York, the Synod of New York and the General Assembly have done with reference to the status of the Prosecuting Committee as representing the Presbyterian Church in the United States of America, the Appellant in this case. The following are the facts:

Action of New York Presbytery as to the Prosecuting Committee.

At a meeting of the Presbytery of New York in April, 1891, a committee was appointed to consider the Inaugural Address of the Appellee in its relation to the Confession of Faith. This Committee, in its report, recommended "that the Presbytery enter at once upon the judicial investigation of the case," and the Presbytery having adopted the recommendation, the report was adopted. That was the inception of the case. The Prosecuting Committee, of which the Rev. G. W. F. Birch, D. D., is Chairman, was appointed at the meeting of the Presbytery of New York held in May, 1891, "to arrange and prepare the necessary proceedings appropriate in the case of Dr. Briggs." The intent of the Presbytery in appointing the Committee

was to make it such a Committee as is contemplated by Section 11 of the Book of Discipline—namely, a Prosecuting Committee.

An appeal was made to you this morning by the Appellee, on the ground that he had not been courteously or fairly dealt with by this Committee. This Committee has no explanation or apology to make for anything that it has done, as it believes, under the instruction and provision of the Constitution of the Presbyterian Church in the United States of America, and in protecting the interests of that Church against what is believed to be fundamental error. Although we have been so often criticised, in the public press and elsewhere, I wish to call the attention of this Assembly to the fact, that never, except upon the floor of the Courts of this Church, so far as I know, has any member of this Committee given public expression to his views or ideas. We have held that we represented the Presbyterian Church in the United States of America, as a whole, and if it appeared to be for the interest of any one to criticise or blame us, that we would have to take the blame, until the final issue is reached, and the Presbyterian Church determines whether we have or have not done our duty. But the suggestion was made by him that courtesy had not been extended to the Appellee in this matter. It is only right and fair that you should know (everybody in the Presbytery of New York knows it, for the letter I am about to read has been read in the hearing of that Presbytery), that before a single step was taken by the Committee appointed by the Presbytery to consider the Inaugural Address, the Chairman of that Committee wrote to the Rev. Dr. Briggs, suggesting that meetings of the Committee would be held at a certain time and place, and asking that Dr. Briggs would join them, for conference, before any action was taken. I will now read to you, without comment, the answer received by the Committee to their invitation, and then I shall let the matter pass.

"120 West 93d Street,

"New York, April 24, 1891.

"The Rev. G. W. F. Birch, D. D.

"My dear Sir:

"In response to your letter of April 23d, "inviting me to be present at the next meeting of a "committee, of which you are Chairman, I beg leave "to say: (1) The state of my health will not admit of "my compliance with your invitation, and (2) If I "were in good health, I would still be obliged to "decline, for the reason that it would seem that your "committee were appointed to consider my 'Inaugural "Address,' and not to consider any explanations of it "I might be willing to make.

"Yours respectfully,

"C. A. Briggs."

The Presbytery of New York has regarded the said Committee, at all times, as a Prosecuting Committee, appointed in accordance with Section 11 of the Book of Discipline, as is evidenced by the following action and extracts from its records.

The Presbytery accepted and adopted the charges and specifications prepared by the Committee and entered upon the trial, with this Committee acting as a Committee of Prosecution, and the Appellee himself agreed in open session of the Presbytery, on October 6, 1891, that he would so proceed to trial, and that arrangement is recorded at page 479 of Volume 13 of the Records of the Presbytery of New York, as follows:

"By agreement between Dr. Briggs and the *Prosecuting Committee** it was resolved that the 4th day of November, 1891, at 10 A. M., be fixed as the day on which the citation is returnable and that the citation

* The italics throughout, unless otherwise indicated, are mine.—J. J. McC.

be issued for that date, in accordance with Section 19 of the Book of Discipline."

The following is an extract from the citation served upon Dr. Briggs by the Moderator, in the presence of the Presbytery of New York, on September 6, 1891:

"CITATION.

"You are hereby furnished with a copy of the charges and specifications presented to the Presbytery on the 5th day of October, 1891, by the *Committee of Prosecution* appointed by the Presbytery of New York at its meeting in May last, which report, with its accompanying recommendations, were accepted and adopted by this Presbytery on the said 5th day of October, 1891.

"(Signed) JOHN C. BLISS, Moderator."

The certificate accompanying the charges and specifications served upon Dr. Briggs by the Moderator, in the presence of the Presbytery, on October 6, 1891, is as follows:

"I hereby certify that the foregoing is an authentic copy of the charges and specifications against Prof. Charles A. Briggs, which *the Presbytery of New York has ordered shall be prosecuted.*

"(Signed) JOHN C. BLISS, Moderator."

"October 6, 1891."

The following quotations are from Volume 13 of the Records of the Presbytery of New York, and fully indicate the status of the Prosecuting Committee and the purpose and intent of the Presbytery in appointing the same.

Page 434. "The time having come in the order of business to receive the report of the *Committee of Prosecution* in the case of the Rev. Charles A. Briggs, Rev. George Alexander asked leave to introduce," etc., and he introduced a paper.

Also on page 434. "Objection was made on the ground that Dr. Birch, *as Chairman of the Committee of Prosecution*, had the floor, and that the motion to suspend the order of the day could not be introduced."

Page 435. "The *Committee of Prosecution* in the case of Dr. Briggs, *appointed in compliance with Section* 11 *of the Book of Discipline*, at the meeting of Presbytery in May last, reported as follows" :

The following is an extract from the paper proposed by the Rev. George Alexander, D. D., as a substitute for the recommendation contained in the report of the Prosecuting Committee :

Page 463. "Whereas, the Presbytery of New York, at its meeting in May last, on account of utterances contained in an inaugural address delivered January 20th, 1891, *appointed a committee to formulate charges* against the author of that address, the Rev. Charles A. Briggs, D. D."

Page 463. The report made by the Prosecuting Committee containing the charges and specifications "was accepted by the Presbytery."

Page 470. The recommendation in the report of the Prosecuting Committee in the matter of Dr. Briggs was adopted.

During the proceedings of the Presbytery of New York, on November 4th, 1891, when the case was dismissed, the minutes, Vol. 14, page 90, show that the following action was taken :

"At this point (after the reading of Dr. Briggs' Response), the question as to the status of the Prosecuting Committee was raised. The Moderator decided that the Committee was properly a Committee of Prosecution in view of the previous action of Presbytery as recorded, and represented the Presbyterian Church in the United States of America, and was in the house as

an original party in the case, under provision of Section 10 of the Book of Discipline, and is now virtually independent of Presbytery."

"An appeal was taken from the decision of the Moderator. The question was divided. The Moderator was sustained in the point that the Committee was in the house as a properly appointed Committee of Prosecution. The Moderator was also sustained in the point that the Committee as representing the Presbyterian Church in the United States of America was an original party in the Complaint."

This action of the Judicatory in sustaining the Moderator upon the appeal from his decision as to the status of the Prosecuting Committee is itself conclusive evidence of the intent of the Presbytery in appointing and recognizing the Prosecuting Committee as such.

The above ruling of the Moderator of the Presbytery of New York as to the status of the Prosecuting Committee, which was appealed from and sustained by the Presbytery, was undoubtedly in accordance with the provisions of the Book of Discipline, under which the Presbytery was then acting as a judicatory.

Approval by the Synod of New York of the Presbytery's Records.

An examination of Volume 13 of the Records of the Presbytery of New York, covering all the proceedings above referred to, except the last, shows at page 483 that the Synod of New York during its session held at Watertown, New York, on October, 22 1891, examined and approved of the said record. The said Synod has therefore approved of the appointment of this Committee and of its action as a Committee of Prosecution up to October 22, 1891. The period covers the appointment of the Prosecuting Committee, the adoption of its report, including the charges and specifications, the ser-

vice of citation by the Moderator upon Dr. Briggs, and his agreement with the Prosecuting Committee in open Presbytery as to the day upon which the citation was to be returnable.

Relation of a Prosecuting Committee to the Church at Large.

The mere assignment or appointment of certain members of the Presbytery to act as a Prosecuting Committee, when once made, under Section 11 of the Book of Discipline, gives that Committee a relation to the Church at large. It acts on behalf of the Presbyterian Church in the United States of America. It represents the entire Church, and, as such, is an original party. In its representative capacity it is the prosecutor and cannot be disturbed by the Presbytery.

If this were not so, the Church at large could not take and perfect an appeal, although it is one of the original parties. Yet all proceedings initiated by a judicatory, as in this case, *must be* instituted in the name of the Church, in compliance with Section 10 of the Book of Discipline.

Whenever a judicial process is initiated by the judicatory, special conditions arise. The Presbytery is placed in extraordinary and exceptional relations to the Church at large, in that the Presbyterian Church becomes a prosecutor at its bar; for such exceptional relations, exceptional provisions are needed, and they have been made. The Presbytery ought not to be judge and prosecutor at the same time.

To obviate this difficulty, the Constitution, Book of Discipline, Section 10, requires the Presbytery to appoint a committee to conduct the prosecution in the name of the Presbyterian Church in the United States of America. This committee, not the Presbytery, represents the whole Church. It is not dependent for its existence on the will of the Presbytery. It does

not derive its powers from the will of the Presbytery. It is not limited in its action by the will of the Presbytery. This is evident from the following considerations:

1st. The act of Presbytery in appointing the committee of prosecution is *ministerial* only. The committee of prosecution is in no sense the creature of Presbytery. It owes its existence to the Constitution itself. The Presbytery has no discretion in the matter. Having determined to initiate judicial process, it is under obligation to appoint the committee of prosecution, whose duties are defined by Section 11 of the Book of Discipline.

The President of the United States nominates, and by and with the advice and consent of the Senate, appoints the judges of the Supreme Court. In making such appointments the President and Senate act ministerially, in obedience to a constitutional requirement. The power to appoint and to confirm, in these circumstances, does not give the President or the Senate in any degree, the right of control over the action and tenure of the judges. The judges are appointed according to the provisions of the Constitution; they shape their official life and conduct according to the directions of that instrument, in entire independence of the appointing and confirming power.

This illustrates the position of the committee of prosecution in our judicial system. The mere power of appointment, in a ministerial way, does not give the Presbytery the right to control the action and life of the committee. It is not a presbyterial committee. It is created by the Constitution, which determines its duties and the length of its life.

2d. The language of the Book necessarily implies that the committee of prosecution is to represent the Presbyterian Church in every case where the judica-

tory initiates the prosecution. Section 11 of the Book makes the tenth Section effective.

Section 10 directs that, when a judicatory initiates prosecution, the Presbyterian Church in the United States of America *shall be* the prosecutor, and an original party; and Section 11 orders that a committee *shall be* appointed by that judicatory "to conduct "the prosecution." The provisions of Section 11 are absolutely necessary to carry those of Section 10 into effect. And the import of these provisions cannot be mistaken. The Presbyterian Church shall be the prosecutor, and the committee shall conduct the prosecution. Since, then, the Presbyterian Church is to conduct its business as prosecutor, through the instrumentality of the committee of prosecution, the relation between the two can be properly expressed in any given case, only, by saying that the committee represents the Church.

3d. It is sufficiently evident that the committee of prosecution, and not the Presbytery, represents the Presbyterian Church, for, according to Section 11, the committee is "to conduct the prosecution, in all its "stages, in whatever judicatory, until the final issue "be reached."'

This language means that if the case be taken to the higher judicatories, the committee of prosecution must follow it, to conduct the prosecution in all its stages until a final settlement is reached.

But if the committee of prosecution has only a presbyterial relation, and can exist and act only by the will of the Presbytery, then it cannot exercise its functions beyond the bounds of the Presbytery whose creature it is. It would be precluded, by any such relations, from prosecuting in the higher courts. The Presbytery itself has no right to prosecute either at the bar of the Synod or of the Assembly, and cannot,

therefore, empower any of its committees to do so, although it may appear through a committee to defend its own action before a superior judicatory.

But the Book's meaning is clear, that the Presbyterian Church shall continue to be the prosecutor at every stage, and shall do its work as prosecutor by means of the Committee of Prosecution. That committee, then, is related constitutionally, not to the Presbytery, but to the Presbyterian Church. For this reason, its duties are defined, and its rights are guaranteed in all the higher judicatories.

The words, "in all its stages, in whatever judi- "catory," as used in Section 11, involve the right of appeal for both original parties; and since the Presbyterian Church, as an original party, conducts the prosecution by means of the Committee of Prosecution, it is the intent of the Book, that the committee should have the power of appeal, in the name of the Church. The power to appeal is a necessary part of that prosecution, which the committee is directed to conduct in behalf of the Church. It is the only way in which the Presbyterian Church can exercise this right of an original party.

As still further confirmatory of the position that the Committee of Prosecution is not a presbyterial committee, but is constitutionally related to the Presbyterian Church, we have the additional direction of Section 11, "that any appellate judicatory before "which the case is pending shall, if desired by the "prosecuting committee, appoint one or more of its "own members to assist in the prosecution, upon the "nomination of the prosecuting committee." This provision, alone, suffices to prove the prosecuting committee wholly independent of the initiating judicatory. That committee has the sole right to determine whether or not it will have any addition to its membership,

and then to name those to be added by the superior judicatory. If this were a mere presbyterial committee, having no right to act beyond the will of the Presbytery, then, whenever it might become desirable to have assistance in the prosecution, this committee would have to apply to Presbytery for additional members, since neither Synod nor Assembly has the right to constitute, increase or diminish presbyterial committees.

There can be no doubt, then, that the Committee of Prosecution represents the Presbyterian Church in the United States of America, an original party, so far as the prosecution of any given case is concerned, and that it has the constitutional right to take an appeal in the name of that Church, from the final decision of an inferior judicatory in the case.

Against this conclusion no serious objection is urged except that no precedents, under the new Book, sustain it. The answer to this objection is, that, as this is the first important case of the kind, arising under the present Book of Discipline, there has been no opportunity to establish precedents, *except as was done by the General Assembly of* 1892, *in this case.*

This new procedure was adopted, because the practice according to the former procedure was unsatisfactory.

Steps leading to the Revision of the Book of Discipline.

The old-school Assembly of 1861, on motion of Drs. Charles K. Imbrie and Jonathan Edwards, sent back to the Synod of New Jersey, the appeal and complaint of the Presbytery of Passaic against the Synod in the case of Mr. Guild, for the reason that the Synod had not heard the *original parties*, the *Committee of Prosecution* being one of them, thus recognizing the right of the committee prosecuting on

"common fame" to take an appeal. (Minutes of 1861, pp. 146-177.)

The Assembly of 1877 dismissed the case brought before them on appeal, from the Presbytery of Cincinnati, by the Rev. Dr. Thos. H. Skinner and others, who acted as a committee of prosecution, on the ground that the appellants, not being an original party, were not entitled to appeal. But a strong protest was spread on the Minutes, in which the protestants argue with entire conclusiveness that, according to the old Book, not only personal prosecutors and defendants in a judicial case, but any "aggrieved party," and "all "persons who have submitted to a regular trial in an "inferior, may appeal to a higher judicatory." The protest was not answered, for the simple reason that the positions taken in it were unanswerable. (Minutes 1877, pp. 576 to 580.)

At the very next Assembly after that, the revision of the Book of Discipline was begun; and the chapter on appeals was reconstructed. Original parties and their rights were more clearly defined, and the right of appeal given to them exclusively. That uncertain quantity, "Common Fame," was banished altogether, and in place of it, the Presbyterian Church in the United States of America, was made the responsible prosecutor, an original party with specific direction to discharge its functions of prosecutor and original party, by means of the committee of prosecution.

In the old Book, "Common Fame" was not declared to be an original party; but in the new Book, the Presbyterian Church is made an original party, and, as such, has the constitutional right to take an appeal by means of the committee through whom it conducts the prosecution.

It is objected that, if the committee of prosecution represents the Presbyterian Church, and is thus

virtually independent of the Presbytery, then great evils are sure to overtake us. It is said that the Presbyterian Church as represented in the General Assembly, may itself claim the right of appointing the committee; that the committee, thus entrusted with enormous powers, may use them to the great injury of accused parties; and that we open wide the gates for a perfect deluge of litigation, and so endanger the peace and usefulness of the Church to an alarming extent.

But if all this were true, it would not change the constitutionality of the standing and rights of the committee of prosecution under the Book. It might furnish an argument in favor of changing the Book. But these evils are all purely imaginary. They have never existed, and they are not likely to exist under the present Book of Discipline.

The Prosecuting Committee of the Book of Discipline, a Safe and Useful Agency to Conduct Prosecutions in Behalf of the Presbyterian Church.

There are many considerations to warrant the conclusion that a committee of prosecution, with just such relations and powers as are indicated in the Book of Discipline, is not only entirely safe, but also highly desirable as an agency for conducting the prosecution on the part of the Presbyterian Church. For

1. The court which initiates the prosecution, is charged with the duty of appointing the committee. No other body can appoint it, not even the Assembly, since the Constitution does not give it that right. The fact that the committee is charged with grave responsibilities and endowed with a large measure of power, leads to the exercise of caution, first in the initiation of prosecution, and then in the selection of the committee. These are strong safeguards and they are entirely

within the control, in the first instance, of the respective Presbyteries.

The fact that under our Book of Discipline the Prosecuting Committee acting for the Church at large is vested with ample powers to secure prompt decisions, is likely to accomplish very beneficial results.

Presbyteries will be careful not to institute judicial proceedings and appoint such committees, unless, as in this case, strong reasons exist for setting the proceedings in motion.

2. It is not to be presumed that a committee of prosecution, clothed with powers of the kind named, will become an instrument of inflicting wrong upon innocent parties. The presumption is, that a committee of Christian ministers and elders, appointed after prayerful consideration, by a judicatory which is composed of Christian ministers and elders, will be at pains to do only what is just, fair and Christian in the prosecution of any case, and that all the more so, since they are impersonal prosecutors.

The real danger is that, when there may be urgent need for initiating prosecution in a case like this, no body of men will be found willing to serve on the committee of prosecution, as they will thereby make themselves liable to be reviled and traduced, as this Prosecuting Committee has been, for rendering such service to the Church.

3. To illustrate specifically, in a trial for heresy, the Church, through its doctrines, being the party attacked, is in more immediate danger of suffering injury than is the other party. *Her faith, purity and peace, her testimony for the truth, and her ecclesiastical integrity, are all at stake.* The Church ought to have the power to appeal from an adverse decision of an inferior judicatory, whose members may be in sympathy with the

accused or with his erroneous opinions. Such conditions are not impossible.

An accused person, owing to his social or ecclesiastical position, may exert an influence so great in his Presbytery as to render it extremely difficult, if not altogether impossible, to convict him even on the best of evidence. Or a considerable number of the members of that judicatory, through sympathetic or other interests, may so far forget their positions as judges in the case, that they will not only try to retard and hamper the prosecution in every possible way, but actively plan and labor to procure an acquittal, no matter what the evidence may be.

If the Presbyterian Church should have no right of appeal, by its committee of prosecution, from a decision thus reached, by possibly a bare majority vote, then in the language of the Book, "heretical opinions * * * may be allowed to gain ground," with the greatest ease, and to an alarming extent.

This danger is not imaginary in times like our own, when individual liberty of expression is boldly championed at the expense of denominational bonds. The Presbyterian Church must have disciplinary methods such as will enable her to meet threatened dangers of this kind, to defend her faith and to preserve her purity, her integrity and usefulness. To this end the Presbyterian Church was made the prosecutor, and an original party, in certain cases, with the constitutional right of prosecuting by a committee.

Appeal to General Assembly of 1892.

The Prosecuting Committee representing the Presbyterian Church as an original party, appealed from the judgment of the Presbytery of New York, dismissing the case, entered on November 4th, 1891, to the General Assembly of 1892.

The Prosecuting Committee based its first appeal from the Presbytery directly to the General Assembly of 1892, upon the special reasons set out therein, which have been substantially repeated in the pending appeal. They also relied upon the provisions of Section 102 of the Book of Discipline, which is as follows: "102. Appeals are, *generally*, to be taken to the judicatory immediately superior to that appealed from." And upon Chapter XII., Sections IV. and V. of the Form of Government, which are as follows:

"IV. The General Assembly *shall receive and issue all Appeals*, complaints and references that affect *the doctrine or constitution* of the Church which may be regularly brought before them from the inferior *judicatories*."

"V. To the General Assembly also belongs the power of deciding in *all* controversies respecting *doctrine and discipline*."

This Section IV. of the Form of Government is mandatory and says the General Assembly shall receive and issue all appeals that affect the doctrine or constitution of the Church, which may be regularly brought before them from the inferior judicatories.

This mandatory provision when read in connection with Section 102 of the Book of Discipline leaves but little discretion, when the conditions named by the Book have been complied with. They have been complied with in this case, and it would seem that the Assembly is compelled not only to entertain this Appeal but to issue it as well.

Action of the General Assembly of 1892 as to Prosecuting Committee.

The right of the Prosecuting Committee to take an appeal directly to the General Assembly and its status as a Prosecuting Committee, were questioned at Portland and were fully discussed by the Appellant

and the Appellee. The record of the proceedings in this branch of the case, will be found at page 90 and following pages in the Minutes of the General Assembly for 1892, as follows:

"The Judicial Committee presented its report in the case of the Presbyterian Church in the United States of America *vs.* Rev. Charles A. Briggs, D. D., which was accepted as follows:

"The Judicial Committee respectfully reports that it has carefully considered the documents submitted to it in this case, and adopted the following resolutions:

"1. That, in the opinion of this Committee, the appeal taken by *the Presbyterian Church in the United States of America, an original party* represented by the '*Committee of Prosecution,*' *appointed under Section* 11 *of the Book of Discipline*, has been taken from the final judgment of the Presbytery in dismissing the case; and *that the said Committee had the right to take this appeal representing the said original party.*

"2. That it finds that the notice of the appeal has been given, and that the appeal, specifications of error, and record have been filed in accordance with Sections 96 and 97 of the Book of Discipline, and the appeal is order.

"3. That, in the judgment of the Committee, the appeal should be entertained, and a time set apart for the hearing of the case.

"In view of these considerations, the Committee reports that the appeal is in order, and that the General Assembly should proceed in accordance with the provisions of Section 99 of the Book of Discipline, by causing the judgment appealed from, the notice of appeal, the appeal and the specifications of the errors alleged, to be read; then to hear the appellant by the Committee of Prosecution; then the defendant in

person, or by his counsel; then the appellant by the Committee of Prosecution in reply upon the question 'whether the appeal shall be entertained?'."

In behalf of the Committee,

T. Ralston Smith,
Chairman.

That report was brought before the house. A minority of the Judicial Committee presented a report which was also accepted, and, although the Assembly subsequently, after full discussion by the parties, laid the minority report on the table and adopted the report of the majority of the Committee, that minority report and the action of the Assembly thereon, becomes of great interest and importance, in view of what is now proposed. The minority of the Judicial Committee clearly expressed their views in the report, and there is not a word in it suggesting that this Prosecuting Committee was not a duly constituted prosecuting committee. Nor is there any question raised as to the right of the Committee to take the appeal. But what did the minority recommend? They said:

"The undersigned, a minority of the Judicial Committee, would respectfully submit the following report:

"Whereas, the Book of Discipline requires that appeals are, generally, to be taken to the Judicatory immediately superior to that appealed from" (Sec. 102); and,

Whereas, There are no sufficient reasons for making the appeal against the Presbytery of New York in dismissing the case against Dr. Briggs an exception to this rule;

"Therefore, we recommend to the General Assembly *that the appeal be not entertained;* that the papers in the case be returned to the Appellant, and *that they be*

advised to bring their appeal or complaint before the Synod of New York.

Respectfully submitted,

D. R. Frazer,
Thomas Gordon,
Oswald P. Backus,
George W. Ketcham."

If this Committee was not a Prosecuting Committee and had not the right to appeal to the General Assembly, what right had such a Committee to take an appeal to the Synod of New York? Before passing away from the consideration of this minority report, it may be well to recall the fact, that the Portland Assembly, after hearing the arguments on both sides, and after discussion by members of the Assembly, *did not adopt* the recommendations of the minority report *to refer the case back to Synod*, but laid the minority report upon the table, and adopted the recommendations of the majority of the Committee.

The Assembly of 1892 Declined to Return the Case to Synod.

The General Assembly of 1892, in declining to send the case down to Synod, acted intelligently and has established a precedent *in this case* which cannot be ignored when that branch of the subject is under discussion.

These questions as to the status of the Prosecuting Committee, its right to represent the Presbyterian Church in the United States as an original party, and its right to take the appeal directly to the General Assembly, were all brought up. After three hours of argument and discussion by the Committee and the Appellee, and by members of the Assembly, action was had as shown by page 118 of the Minutes of the General Assembly of 1892, as follows:

"Resolved, that so much of the report of the Judicial Committee as relates to the appeal being found in order be adopted."

This action adopted all of the committee's report, except the two lines of subdivision 3, which were excluded because their adoption would have carried the adoption of the report, the very thing that was up for discussion, namely, whether the appeal should or should not be entertained. For this reason it was considered that subdivision 3 should be reserved for action, after the arguments had been made and this was done.

The Appeal to the General Assembly of 1892 was Entertained.

On page 119 of the Minutes of the General Assembly of 1892, you will find the action of the Assembly, on the question of entertaining the appeal, as follows:

"It was resolved that the vote on entertaining the appeal be now taken without debate. *The minority report was read and laid* on the table. The Moderator also announced *that the only remaining part of the majority Report which had not been adopted was*, 'Third, that in the judgment of the committee, the appeal should be entertained, and a time set apart for the hearing of the case.' *This part* of the majority report *was then adopted*, carrying in the affirmative the question of the entertainment of the appeal. It was then resolved, that the Assembly proceed at once with the case in the order prescribed in Section XCIX, Book of Discipline."

The Appeal was Sustained.

The appeal to the Assembly having been entertained, the question came up as to the action of the Assembly on the merits of the appeal. The merits were then discussed for an hour and a half by each of the parties, and at the end of that discussion a vote was taken and

the appeal was sustained by a vote of 431 to 87. (General Assembly Minutes 1892, pp. 140-150). "The Moderator announced that the specification of errors in the appeal were all sustained, and the appeal was sustained." A committee was appointed to bring in a minute in the case, the report of which will be found at page 152 of the Minutes of 1892, as follows:

"The Committee appointed to prepare a minute in the judicial case of the Rev. Charles A. Briggs, D. D., presented its report, which was adopted, and is as follows:

"To the General Assembly of the Presbyterian Church in the United States of America:

"Your Committee appointed to draft a form of judgment to be entered in the case of the Presbyterian Church in the United States of America against Rev. Charles A. Briggs, D. D., respectfully report, and recommend for adoption, the accompanying form of decree and order.

Respectfully submitted,

THOMAS EWING,
Chairman."

"The Presbyterian Church in the United States of America, *vs.* Rev. Charles A. Briggs, D. D.	*Appeal from the judgment of the Presbytery of New York, dismissing the case.*

"The General Assembly having, on the 28th day of May, 1892, duly sustained all the specifications of error alleged and set forth in the appeal and specification in this case.

"It is now, May 30, 1892, ordered, that the judgment of the Presbytery of New York, entered November 4, 1891, dismissing the case of the Presbyterian Church in the United States of America, against Rev. Charles A. Briggs, D. D., be, and the same is hereby reversed. And the case is remanded to the Presbytery of New York for a new trial, with directions to the said Presbytery to proceed to pass upon and determine the sufficiency of the charges and specifications in form and legal effect, and to permit the *Prosecuting Committee* to amend the specifications or charges, *not changing the general nature of the same*, if, in the furtherance of justice, it be necessary to amend, so that the case may be brought to issue and tried on the merits thereof as speedily as may be practical.

"And it is further ordered, that the stated clerk of the General Assembly return the record, and certify the proceedings had thereon, with the necessary papers relating thereto, to the Presbytery of New York."

The exact status of the Prosecuting Committee was fully recognized and defined in the report of the majority of the Judicial Committee, which was adopted by the Assembly. It was not questioned in the minority report and it was established by the entertainment and sustaining of the Appeal. In the

mandate of the Assembly to the Presbytery of New York, the rights of the Committee are recognized in express terms.

No fair-minded man, after reading the record of what was done in this case, by the General Assembly of 1892, can longer question the status of the Prosecuting Committee, but if any further evidence should be required as to what that Assembly did and intended to do, it would be found in a protest presented by the Rev. S. J. McPherson, D. D., and some 53 or 54 others, against the action of the General Assembly, which protest is found at page 205 of the Minutes of 1892. There was no misunderstanding at Portland, on either side, as to what had taken place, as the protest which certain of those who were on the ground and disapproved of the Assembly's action clearly shows, as follows:

"The following protest was presented and ordered to be entered on the 'Minutes' of the Assembly without answer.

"We, the undersigned, ministers and elders, commissioners of the 104th General Assembly, do hereby enter and record our protest against the action of the General Assembly *in entertaining the appeal* in the case of 'The Presbyterian Church in the United States of America against the Rev. Charles A. Briggs, D. D.,' and *so giving to the Committee* which preferred the charges against Dr. Briggs *standing before the Assembly and right of appeal* as an '*original party*,' *beyond the control of the Presbytery and its power to discharge them when dismissing the case.*" * * *

The General Assembly cannot Revise or Reverse Action taken by a Previous Assembly in a Judicial Case.

It must be kept in mind that the action of the General Assembly of 1892, in deciding substantially all of

the questions which can be raised in opposition to the entertainment of this appeal, is not to be referred to simply as a precedent, in a case similar to this. It was action taken after full discussion, and in this judicial case. Among the questions thus passed upon and determined by the Assembly of 1892 are the following, which are now *res adjudicata* in this case.

1. That the appeal was taken by the Presbyterian Church in the United States of America, as an Original Party.

2. That the Original Party is represented by the Prosecuting Committee.

3. That such Committee is a Prosecuting Committee appointed under Section 11 of the Book of Discipline.

4. The Original Party, by its Prosecuting Committee, has the right, in this case, to take such an appeal from the Presbytery, directly to the General Assembly.

5. That such an Appeal is regular and in order.

6. The appeal being regular and in order, it must be received and issued by the Assembly and should not be sent down to Synod. (Form of Government, Chap. XII., Sec. IV.)

It is the law of our Church, that it is not competent for one General Assembly to *revise or reverse* the proceedings of a previous Assembly, *taken in a judicial case.* This point, as stated above, has been settled by the General Assembly in the appeal of Samuel Lowry, Minutes 1824, page 115; case of T. F. Worrell, Minutes, 1864, page 398.

The case before us, the Presbyterian Church in the United States of America against the Rev. Charles A. Briggs, D. D., is the same case, the appeal in which was entertained and sustained by the General Assembly of 1892, at Portland, Oregon.

By reference to the printed Record in your hands,

at page 37, you will find the mandate of the General Assembly in that case, reversing the judgment of the Presbytery of New York, entered on the 4th day of November, 1891.

This order of the General Assembly remanded the case to the Presbytery of New York, with directions that the case should be brought to issue and tried on the merits thereof. The mandate also directed that the Presbytery should pass upon and determine the sufficiency of the Charges and Specifications in form and legal effect, and to permit the Prosecuting Committee to amend the Charges and Specifications, not changing the general nature of the same.

The Prosecuting Committee, with the consent of the Presbytery, the Appellee not objecting, filed amended Charges and Specifications, which did not change the general nature of the original charges. The fact that the Presbytery threw out two of the amended charges, Nos. IV. and VII., upon the mistaken ground that they did not conform to the general nature of the original charges, is made the basis of Specifications 1 and 11 under the first ground of the Appeal now pending.

By the mandate of the Assembly of 1892, the Presbytery was restricted in the trial upon the merits to the original charges or to amended charges, which did not change the general nature of the original charges.

The fact that the Presbytery proceeded to trial upon six out of eight of the amended charges, is conclusive evidence, that the judgment now appealed from is in the same judicial case that was entertained and sustained at Portland, remanded to New York, there tried, and from the final judgment in which this appeal was taken.

This appeal is therefore an appeal in the same judicial case as that decided by the General Assembly of 1892, and there is no fact to justify the claim made

by the Appellee that this is an appeal in a different case, and that the precedents established in this judicial case, by the Assembly of 1892, are not controlling.

All the points decided by the Portland Assembly of 1892, in the case of the Presbyterian Church in the United States of America against the Rev. Charles A. Briggs, D. D., are decisions in this judicial case, under the same title and with the same parties as the one, the entertainment of which, is now under consideration.

Under these circumstances, the precedents above referred to, established by the Assemblies of 1824 and 1864, which remain unquestioned, absolutely preclude this Assembly from attempting to revise or reverse the action of the Assembly of 1892 upon any point, in this judicial case, passed upon by that Assembly.

Action of Synod of New York as to the Prosecuting Committee.

Subsequent to the proceedings in the Presbytery of New York, on November 4, 1891, which resulted in the judgment dismissing the case, the Rev. Francis Brown, D. D., made complaint to the Synod of New York, against the action of the Presbytery in sustaining the ruling of the Moderator, that the Committee was a Committee of Prosecution under Section 11 of the Book of Discipline.

After the ten days provided for by Section 84 of the Book of Discipline, had expired, and in some cases months after, the names of a number of persons, 113 in all, no one of whom had given notice of complaint, were added to this complaint, and it was claimed for it, that the action of the Presbytery complained of, was had in *a non-judicial case*, and that, therefore, under Section 85 of the Book of Discipline said paper, with the additional signatures, purporting to be a complaint, stayed the *judicial proceedings* until the final issue of the case in the superior judicatory.

This paper, purporting to be a complaint, was presented to the Synod of New York, at its session held at Albany, New York, in October, 1892, and was declared to be in order, but the Synod, after extended discussion, decided not to issue the complaint, and by a vote of 122 to 40 took the following action:

"In the matter of Judicial cases Nos. 3 and 4 (Dr. Brown's complaint) the committee finds the complaints to be in order, *but recommends that it is inexpedient to take action at the present time for the following reasons:*

"1. The case, through the action of the General Assembly and of the Presbytery of New York, is again before the Presbytery, and the complainants will there have their remedy in their own hands.

"2. In case the remedy then be found insufficient, they may afterwards have opportunity by appeal or complaint to bring the case before Synod."

When the matter was again presented to the Presbytery of New York, it was discovered that the complainants did not "have their remedy in their own hands," for the Presbytery, as hereinafter shown, promptly, and for the second time, sustained the ruling of the Moderator, which had been appealed from, as to the status of the Prosecuting Committee.

Complaint against Action of the Synod of New York, now pending before this Assembly.

A complaint was made to this Assembly and is now pending before it, against the action of the Synod of New York in declaring the said paper purporting to be a complaint, to be in order, in respect of the 113 so-called complainants, no one of whom had given notice of complaint, as required by Section 84 of the Book of Discipline, and whose signatures were added to the paper purporting to be a complaint, after the expiration of the ten days fixed by the Book of Discipline.

The complaint to the Assembly against the action of the Synod of New York, last above referred to, brings up to this Assembly the only question of the slightest importance, in this case, now before the Synod. When the question raised by that complaint, and the issues in this appeal, have been considered all the questions involved can be at the same time and finally disposed of by the highest Court of our Church.

Final Action by New York Presbytery as to the Status of the Prosecuting Committee.

When in compliance with the mandate of the General Assembly the Presbytery of New York, on the 9th day of November, 1892, proceeded with the trial, the Appellee presented objections to the status, rights and powers of the Prosecuting Committee and asked the Presbytery to apply the remedy which the Synod had said might be in its own hands.

Thereupon the following proceedings were had as recorded at page 262 of Vol. 14 of the Records of the Presbytery of New York:

"A point of order was here raised as to whether any-
"thing is in order except the consideration of the spe-
"cific action of the General Assembly.

"The Moderator decided that the point of order was
"well taken. That the raising of the question of the
"status of the Prosecuting Committee and of its right
"to appear and continue the conduct of this case is not
"now in order for these reasons:

"1st. That this whole question was fully discussed
"and decided by the Judicial Committee of the General
"Assembly.

"2d. That the recognition of the status of the Com-
"mittee and its powers as defined in the appeal were
"embodied in the Judicial Committee's report, recom-
"mending the entertainment of the appeal.

"3d. That in the minutes of the General Assembly "giving its findings in the case, the Committee's status "is clearly recognized.

"4th. That the protest recorded in the minutes of "the General Assembly by those objecting to its action, "was based on the fact, that its action in entertaining "the appeal gave the committee the standing and "powers claimed for it; and

"Lastly. That the order sending the case again to "this Presbytery, requiring us to proceed to pass upon "and determine the sufficiency of the charges and "specifications, as to form and legal effect, and to "proceed with the trial, this being the single point "before us to be acted upon, therefore the Moderator's "decision is, that this question is out of order.

"An appeal to the house against the Moderator's "decision was then taken. On a vote being taken, a "division was called for, which resulted in 73 to 58 in "favor of the Moderator's decision."

By thus, a second time, sustaining the Moderator's ruling the Presbytery of New York gave a very decided answer to the Appellee's request. It confirmed its previous action, and based the same upon the action of the General Assembly of 1892, which fully sustained the status, rights and powers of the Prosecuting Committee at every point.

In view of the above, it is not creditable to our intelligence, nor loyal to the decisions of our highest Court, that we should give this matter further consideration.

An Alleged Constitutional Limitation.

Great weight has been given to a technical question raised in the interest of the Appellee and of delay, based upon a clause contained in the Fifth Amendment to the Constitution of the United States, which is as follows: * * * "Nor shall any person be subject

for the same offense to be twice put in jeopardy of life or limb." It has been claimed that this constitutional provision prevents an appeal from the final judgment of the Presbytery of New York in this case, and that such an appeal would place the Appellee's "ecclesiastical life" in jeopardy a second time. This somewhat ingenious but inappropriate use of the term "ecclesiastical life" seems to have confused the minds of some, as to the character of proceedings under the Book of Discipline.

THE ORDINATION VOW A COVENANT AND AGREEMENT.

When the Appellee was ordained as a minister, and as a condition precedent to such ordination, certain questions were addressed to him, among others the following (Form of Government, Chapter XV., Section XII.):

"1. Do you believe the Scriptures of the Old and New Testaments to be the Word of God, the only infallible rule of faith and practice?

"2. Do you sincerely receive and adopt the Confession of Faith of this Church, as containing the system of doctrine taught in the Holy Scriptures?

"3. Do you approve of the government and discipline of the Presbyterian Church in these United States?

"4. Do you promise subjection to your brethren in the Lord?

* * * * * * * * *

"6. Do you promise to be zealous and faithful in maintaining the truths of the Gospel, and the purity and peace of the Church; whatever persecution or opposition may arise unto you on that account?"

To each of these questions the Appellee gave an affirmative answer and these questions and answers thenceforth were part of a sacred covenant, contract

or agreement between the Appellee and the Presbyterian Church and all the parties in interest.

The relation then established was a purely voluntary one of contract or agreement. Good considerations moved each of the parties and the questions and answers established the agreement or meeting of the minds of the parties.

This not a Criminal Case, but a Proceeding to Determine whether the Appellee's Agreement has been carried out.

This judicial proceeding is to determine whether that covenant, contract or agreement of the Appellee has been complied with or not. The inaccurate use of the term "ecclesiastical life" cannot change the nature of this proceeding under the Book of Discipline.

These are not criminal proceedings involving peril to the life or limb of the Appellee. They are proceedings to enforce a contract, or rather to determine whether the contract has been maintained in all its integrity. Preservation of "ecclesiastical life" in this case means simply the privilege to enjoy the benefits of a certain contract. If it should be shown that the Appellee has not maintained the contract in all its integrity, the loss of his "ecclesiastical life" would mean simply the loss of the benefits which he at one time enjoyed under the contract which he had broken.

As a matter of law, the distinction upon which I am insisting is so simple as to require only very brief illustration. A citizen of the United States is engaged by contract to perform certain services, for which he receives an official position and adequate compensation. It is at length alleged, by the other party to the contract, that such services have not been properly performed, and the matter is brought into the Courts, the bill praying that the contract, because of its nonperformance by the other party, should be cancelled or

terminated. A decision is reached in the Court of first resort, in favor of the citizen first alluded to, and the other contracting party appeals.

Would the appellee, in such a case, be justified, or could he successfully plead that the Constitution of the United States protected him, and that he need give no attention to the appeal? Might he claim that the Constitution of the United States precluded the appellate Courts from considering a second time, on appeal, the points involved in the alleged breach of contract? There is probably no lawyer in this country, there is certainly no lawyer in this assembly, who would answer these questions in the affirmative.

The failure of the appellee in such a case, to comply with the terms of his contract, injures the other contracting party. He may not wish or pray for damages; he simply asks for relief from a contract that has not been fulfilled by the other party and from a relation which has therefore become intolerable. But the question whether the contract has been broken, is a proper one for the appellate Court to consider in determining whether the appellant is entitled to the relief asked for.

The appellee, in such a case, might say that as he was dependent upon the business position and income secured through the contract, that his "business life" and his "financial life" would be placed in jeopardy a second time by the appeal. But the twice-endangered business life or financial life could not be made a ground of objection to the appeal as such.

Not only every lawyer, but every man of affairs will assent to that. What has been called a man's "ecclesiastical life" is a matter of great importance, but it should not be urged as a ground against an appeal in a case where an ecclesiastical covenant is involved. It would, indeed, be unfortunate if a higher code of

ethics prevailed in the civil Courts of this country than the code which is recognized in the courts of this Church.

The Constitutional Limitation, above referred to, does not apply in this case.

The provision of the amendment to the Constitution referred to, is the outgrowth or remnant of the struggle for security and safety on the part of the subject against the despotic and arbitrary power so often exercised by kings and rulers in the past, over their subjects. It originated as a constitutional and very proper safeguard to protect the subject against the power of a sovereign. This provision was introduced as an amendment to the Constitution of the United States, simply to guard against the power of the Federal Government and the Federal Courts, at a time when alarm was felt about the tendency towards Federal centralization of power. It is still an eminently wise constitutional provision, and properly controls in the administration of justice in all criminal cases where the death penalty or other serious legal penalty is enforced, but it has no place or influence in the orderly enforcement of discipline under the Constitution of a voluntary association like the Presbyterian Church.

No one is forced to accept the doctrines of the Presbyterian Church. No one is forced to remain in a position where one is subject to its discipline. But when any one has voluntarily entered into covenant or agreement with that Church, he is honorably and morally bound to submit to the orderly enforcement of its law. So long as he remains in this ecclesiastical fellowship and communion, it is not lawful or right to invoke the provisions of any civil law or constitution to delay the orderly enforcement of the discipline of the Church, or to prevent it.

The Confessional Position as to Civil Laws and Constitutions.

The Confession of Faith enforces this distinction with the utmost clearness. Chapter XXIII., Subsection III., is as follows: "Civil magistrates may not * * * * * * in the least, interfere in matters of faith. * * * * * * * And, as Jesus Christ hath appointed a regular government and discipline in his Church, no law of any commonwealth should interfere with, let, or hinder, the due exercise thereof, among the voluntary members of any denomination of Christians, according to their own profession and belief." * * * *

Decision thereon of the Supreme Court of the United States.

This position so fully and clearly stated in the Confession of Faith, has in effect, been adopted by the Supreme Court of the United States in the leading case of Watson against Jones, reported in 13 Wallace, pages 679–738. This case is commonly known as the Walnut Street Church case and the opinion is given in full in Moore's Digest, 1886, pages 251–262.

In this decision the Supreme Court of the United States holds, that when the General Assembly as the Supreme Court of the Presbyterian Church has decided *any question of doctrine or discipline* according to the Standards and Book of Discipline, *the legal tribunals must accept such decision as final as against the decision of any Civil Court or Constitution*, and that the Civil Courts will not even look into or question such decisions. This opinion of the Supreme Court of the United States says:

"There are in the Presbyterian system of ecclesiastical government, in regular succession, the Presbytery over the session or local church, the Synod over the

Presbytery and the General Assembly over all. These are called in the language of the Church organs, judicatories, and they entertain appeals from the decisions of those below, and prescribe corrective measures in other cases."

"In this class of cases we think the rule of action which should govern the civil courts, founded in a broad and sound view of the relations of Church and State under our system of laws, and supported by a preponderating weight of judicial authority, is that, whenever the questions of discipline or of faith or ecclesiastical rule, custom or law, have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final and as binding on them in their application to the case before them."

"The right to organize voluntary religious associations, to assist in the expression and dissemination of any religious doctrine, and to create tribunals for the decision of controverted questions of faith within the association, and for the ecclesiastical government of all the individual members, congregations and officers within the general association, is unquestioned. All who unite themselves to such a body, do so with an implied consent to this government, and are bound to submit to it. But it would be vain consent and would lead to the total subversion of such religious bodies, if any one aggrieved by one of their decisions could appeal to the secular Courts and have them reversed. It is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, *subject only to such appeals* as the organism itself provides for."

The opinion of the Supreme Court continues as follows:

"In the case of Watson *vs.* Farris, 45 Missouri, 183, that Court held *that whether a case was regularly or irregularly before the Assembly, was a question which the Assembly had the right to determine for itself*, and no civil court could reverse, modify or impair its action in a matter of merely ecclesiastical concern."

"We cannot better close this review of the authorities than in the language of the Supreme Court of Pennsylvania in the case of the German Reformed Church *vs.* Siebert, 5 Barr, 291; 'The decisions of ecclesiastical courts, like every other judicial tribunal are final, as they are the best judges of what constitutes an offence against the word of God and the discipline of the Church. Any other than those Courts must be incompetent judges of matters of faith, discipline and doctrine; and civil courts if they should be so unwise as to attempt to supervise their judgments on matters which come within their jurisdiction, would only involve themselves in a sea of uncertainty and doubt which would do anything but improve either religion or good morals'."

This Decision the Law of the Land.

This decision of the Supreme Court of the United States still stands. It has been frequently cited with approval by the same Court and is the law of the land upon the questions decided therein. *This decision of the Supreme Court of the United States makes final and conclusive any decision reached by the General Assembly of the Presbyterian Church as to matters that concern theological controversy, Church discipline, ecclesiastical government or the conformity of the members of the Church to its Standards.*

Even if the provision of the Constitution of the United States referred to, did apply to proceedings under a

Book of Discipline like that of the Presbyterian Church, such a provision would not be in point. The Constitution of the United States declares, indeed, that no person shall be subject to be put in jeopardy of life or limb, twice for the same offence. But the Supreme Court of the United States has held in ex-parte, Lange 18 Wallace, 163, that this constitutional provision was mainly designed *to prevent a second punishment* for the same crime or misdemeanor and not a second trial. Where, as in this case, *no punishment has been inflicted upon the Appellee*, the Constitutional provision is not to be invoked. It is not to interfere. It has reference only to restraints upon the general government, and its courts. (Baker on the Constitution, page 182.)

[Here the argument was interrupted by adjournment.]

Before resuming my argument at the point of interruption at the adjournment of this afternoon, I should say something as to the concluding part of Dr. Briggs' argument.

The declaration of his faith made by the Appellee at the close of his plea, may or may not be fully in accord with the accepted forms of belief in the Presbyterian Church. One point should be noted in it, however. He has modified his answer to the questions of Union Seminary, for he now declares that he accepts the Scriptures as true, as to historical facts, a modification sufficiently broad to allow of acceptance even by one who believes that Jonah, or Ruth, or Esther, or Job, or all of them, are unhistorical characters.

In any event, the Appellee's confession here made, is no stronger than that which he made just before delivering the Inaugural Address, so that the question remains as it did, before this new statement was altered as it has been to-day. In the Appellee's judgment his inaugural is fully in accord with the con-

fession. The question for you to decide, is whether or not the two can be in full accord.

The Appellee referred sharply to the fact that on page 6 of the Record the Appellants had omitted the series of questions and answers included in the preamble to the resolution. Stars were placed in the record to indicate an omission, as should always be done when an extract is not full and complete.

An examination of the page will show to any candid man that everything covering the matter at issue is given there, and given in fullness. That matter was introduced, not to tell anything respecting Dr. Briggs' soundness or unsoundness, nor even to tell anything that Dr. Briggs had said, but solely and only to prove that an attempt was made to dismiss the case because of statements made by Dr. Briggs, not on the floor of the Presbytery, not in response to queries offered by the Presbytery, but made to a body of gentlemen who in their corporate capacity bore no direct relations to the Presbytery.

With reference to the confession or declaration as made by the Appellee to-day, I was very glad to hear it. I have heard it in somewhat similar forms on other occasions. But those categorical answers were given and were replied to, after the Inaugural Address had been delivered, but before the proceedings in the New York Presbytery were begun.

During the first trial declarations of principles were made by the Appellee and the case was dismissed. Keep in mind the only thing that these proceedings are based upon is the Inaugural Address.

If any one has the volume in his possession, and will look at the preface of the third edition of Dr. Briggs' Inaugural Address, which bears imprint or date of November 5th, 1891, the day immediately following

the first trial in Presbytery—the day after the case had been dismissed—he will find these words:

"I have seen nothing in the hostile criticism to lead me to make any change whatever, either in the matter or the form of the address. But it seems to me wise to republish the address in a second edition under my own responsibility, with some additional notes and explanations."

This third edition contains the charges made against me before the Presbytery of New York, Oct. 5th, and my answer thereto of Nov. 4th.

The fourth edition of the Inaugural, which is dated in the following year, June 24th, 1892, contains the above words, reaffirming at that date the declarations of the Inaugural Address.

The charges are based upon the Inaugural Address only; and the Inaugural Address, as you see by the preface of the succeeding editions, stands not retracted, not withdrawn—stands just as delivered.

I will now resume, Fathers and Brethren, at the point at which the argument was interrupted.

The Alleged Plea that an Acquittal by a Lower Court Bars the Right of Appeal.

It has been frequently claimed of late, that "by the law of the Presbyterian Church the acquittal of an accused person by a lower court, bars the right of appeal to a higher court."

Such a claim is not true in fact nor sound in law. Some have been led into mistake in this matter from not distinguishing the very marked difference between some of the provisions of law and the procedure followed in civil and ecclesiastical trials.

By the Amended Charges and Specifications in this case, the accused was charged with delivering an In-

augural Address, in which it was claimed, that he taught doctrines which are contrary to the Holy Scriptures and the Standards of the Presbyterian Church. Upon the trial the accused admitted the fact that he had delivered the Address containing the words set out in the Specifications to the Charges. But at the same time he made a denial, which, in the Civil Courts, would be called a demurrer, as to the legal effect of the teaching with which he was charged.

In a trial in a civil court, the facts as to what he had taught, which were admitted, would have been passed upon by the jury ; the legal effect of the teaching which he denied, would have been passed upon by the Court. It is at this point that confusion comes to some minds. I ask you to carefully distinguish the difference between the organization and practice of the civil and ecclesiastical courts.

Under our Presbyterian polity, the members of a Judicatory are both jurymen and judges. By the admissions of the accused, that he did deliver the address and did use the words charged, the case passed at once out of the hands of the members of the Judicatory in their capacity of jurymen, for the facts were all settled by the admissions of the accused. The questions of law had been already determined when the Presbytery accepted the charges and specifications, as sufficient in form and legal effect, if proved, to be an offence and sufficient to put the accused on his defence. (Records Presbytery of N. Y., Vol. 14, page 369.)

After hearing the arguments on both sides the Judicatory went into private session and determined that the accused should be "fully acquitted." Thereupon the case was taken on appeal to the Supreme Court of the Church on the legal questions involved.

It would not be proper for me, at this time, to discuss the further steps in the appeal, but it is sufficient to

say that while such proceedings are seldom taken in our ecclesiastical Courts, corresponding proceedings are taken every day in our Federal and State Courts.

As the Form of Government and the Book of Discipline of the Presbyterian Church make full and exact provision for appeals to the General Assembly on doctrinal and constitutional questions, making no distinction as to whether the decision appealed from was for or against the accused, no good, sound or legal reason exists why such an appeal having been taken should not be entertained by this Assembly.

It is affirmed that, if this right of appeal, especially appeal from a verdict of acquittal, in the name of the Church, be granted to the Committee of Prosecution, it will be in gross violation of the Constitution, and result in the rankest kind of injustice. Surely this objection is not intended seriously. How can that be a violation of the constitution for which the constitution makes express provision? The absence of precedent for the exercise of this right by the Committee of Prosecution, does not make its exercise unconstitutional, for, as has been stated already, there may have been neither time nor occasion for making precedents on this point. To affirm that everything for which there cannot be found a precedent is unconstitutional, is to elevate precedent above the Constitution, and to deny the possibility of constitutional reforms or changes.

The Constitution of the Presbyterian Church does not regard the verdict of acquittal in the lower Judicatory as a completion of the case, in the sense that the jeopardy ceases with such acquittal. An accused person has never been in jeopardy, technically, until the case reaches Synod, in matters of ordinary discipline, or reaches the Assembly in cases of doctrine and Constitution.

This right of appeal from any decision of an inferior judicatory by any of the parties has never been

seriously questioned. It has been uniformly exercised. Under the Old Book, "a party aggrieved," and all persons who have submitted to a regular trial in an inferior, may appeal to a higher judicatory. Any one or more of a minority had the right to appeal from any final judgment of a lower to a higher judicatory. Moore's Digest, 1873, p. 548, says: "Before the "adoption of the Constitution in its present form, "in 1821, no distinction was made between an appeal "and complaint. The Common form was, 'we appeal "and complain.' Under this broad title *any decision* "*whatever* was carried by *any parties* from the lower "courts to the higher. *Appeals* are limited by the "present Constitution to the original parties to a case "who may deem themselves aggrieved, and to cases "which have been judicially decided by a lower judi-"catory. Under this head, however, are included all "cases of whatever character which have been the "subject of a decision by an inferior judicatory."

The assembly of 1833 endorsed the principle of appeal from a sentence of acquittal, in the case of Mr. Griffith. (See Moore's Digest, 1873, p. 548.)

"The Synod of New York decided that the death of "Rev. Mr. Griffith should be no bar in the way of the "prosecution of an appeal by his prosecutor from the "decision of the Presbytery of Bedford, acquitting "Mr. Griffith. With these (this) exceptions (excep-"tion) the Committee recommended that the Records "be approved. Their report was adopted. Minutes "1833, p. 400." (Moore's Digest, 1873, p. 548.)

In the case last referred to the Synod of New York decided that a prosecutor had the right to appeal from the decision of the Presbytery acquitting the accused, and that part of the Synod's proceedings the Assembly of 1833 approved.

A well-known Elder of our Church, when recently discussing this question, aptly says: "It has always

" been the law of the Church that the prosecutor, at " least in judicial cases involving doctrine and consti- " tutional law, may take an appeal from the decision of " the Court in which the case originated, to the Supe- " rior Courts, although the decision in the lower Court " may have acquitted the accused of the charge pre- " ferred against him ; and that up to 1821 any one or " more of a minority had the right to appeal from any " decision whatever of a lower Court to a higher. Yet " no one ever claimed or imagined until now, that " there was the slightest injustice in this. On the con- " trary, it was recognized as the only way in which " doctrinal and constitutional questions could be " authoritatively determined.

" In view of these facts I think that it will be ad- " mitted that the right of a prosecutor to appeal to a " superior Court from a judgment of acquittal in an " inferior Court, is not a novelty, an innovation, sought " for the first time to be made a feature of our Church " discipline." (Open letter of William Ernst, Esq., to Prof. Willis J. Beecher, D. D., in the " Presbyterian," April, 1893.)

An Appeal direct from the Presbytery to the Assembly, being allowed by the Book of Discipline, is regular.

This is not the ordinary, but the extraordinary, mode of procedure, and is to be taken only for special reasons. But it should be distinctly noticed that the extraordinary feature does not render it irregular, since the Constitution provides for it.

Section 102 of the Book of Discipline reads : " Appeals " are, generally, to be taken to the judicatory imme- " diately superior to that appealed from." The use of the word " generally " leaves room for exceptional cases, in which " the judicatory immediately superior " may be passed by ; and this is no novelty ; it was not

introduced by those who remodelled the Book; it was in the old Book; it is part of the time-honored practice of our church.

According to Section 70 of the Book of Discipline, there are four ways in which a cause may be carried from a lower to a higher judicatory, viz.: General Review and Control, Reference, Complaint and Appeal. Sections 71 and 83 make it plain that Review and Control and Complaints must invariably be by or to the next superior judicatory.

But it is different with References and Appeals. Section 77 states that a Reference is "made by an "inferior to a superior judicatory," and Section 94 that an appeal is "from an inferior to a superior judicatory." In both cases the language of the Book carefully refrains from naming the judicatory next superior, as in the case of Review and Control, and of Complaints. The *next* superior judicatory may or may not be resorted to in case of a reference or an appeal.

These provisions of the Book of Discipline conform with the directions of the Form of Government. By Chapter XI., Section IV., of the Form of Government, the Synod is debarred from giving a final decision on matters which affect the doctrine and constitution of the Church. I refer to this here particularly for the reason that an overture has come to this Assembly, from some of the Presbyteries, in which the Assembly is urged not to entertain this appeal, as that would be "an ignoring of that important body, the Synod, and "a virtual slight upon synodical privileges and "dignity." But how can Synod be ignored, or its privileges and dignity be slighted by withholding from it a matter respecting which it cannot make a final decision? The appellants have disclaimed any intention to ignore the Synod, or to cast a slight upon its privileges and dignity.

The rights, privileges and dignity of the Synod of New York are not touched in any way by direct appeal to the Assembly, since neither that nor any other Synod has the constitutional power to settle doctrinal or constitutional questions for the whole Church. Besides, the fact, pointed out in the appeal, that all but one of the thirty-one Presbyteries of the Synod of New York will now, in the Assembly, have a voice in the final settlement of these questions, should have due consideration. In no other way can the Synod of New York exert so large an influence in the final determination of this matter.

The Constitution (Form of Government, Chapter XI., Section IV.), in express terms limits the powers of the Synod by providing that its decision shall be final, only, in cases which "do not affect the doctrine or constitution of the church." Such a constitutional limitation does not ignore or reflect upon the dignity of the Synod.

No intelligent man would claim that the provisions of the Constitution of the United States (Article VII., Section I.), that "All bills for raising revenue shall originate in the House of Representatives," is a reflection upon the character or dignity of the Senate of the United States. This provision was made so as to carry out consistently, the theory upon which a Constitution providing for a complete system of political government was based.

So this constitutional limitation upon the power of the Synod, not to make final decisions upon doctrinal and constitutional questions, was most properly made to secure a consistent, fair, well-rounded system of ecclesiastical government.

If time permitted, this might be illustrated in many ways, but one example will be sufficient. When an effort was made to revise the Confession of Faith, in

compliance with the mandatory provisions of the Form of Government the overtures in relation to the proposed doctrinal changes, were sent down, not to the Synods, but to the Presbyteries, and the answers of the Presbyteries were transmitted, not through or by way of the Synods, but directly to the General Assembly.

No one pretends to claim that such a constitutional proceeding is a slight upon the character or dignity of the Synods. It is the constitutional method of dealing with overtures relating to doctrinal changes.

In exactly the same way the constitution provides that appeals in judicial cases, relating to doctrine, need not go to the Synod, but may go directly to the General Assembly.

There is no justification in fact or law, for the statements which have been made, *first,* that this appeal should not, as a matter of right, be brought directly to the General Assembly, or, *second*, that in acting within the limits of constitutional authority, the Prosecuting Committee, representing the entire Church, have intentionally ignored the powers or prerogatives, or reflected upon the character and dignity of the Synod of New York.

This case, as such, has never been before the Synod of New York. That Synod has not assumed jurisdiction of this case. All that it has ever done is to declare in order, two certain complaints which relate to collateral questions, to give to these complaints the legal effect claimed for them by the Complainants they had under Section 85 of the Book of Discipline to allege, that they were not taken in the *judicial case*, although they claimed, as soon as the complaints were made, that the judicial case was thereby stayed.

The Synod of New York has never received or entertained, or heard in its official capacity, of the case of The Presbyterian Church in the United States of

America against the Rev. Charles A. Briggs, D. D. Consequently, in taking this Appeal to the General Assembly, there is no intended slight to the Synod of New York; there is nothing that could be reasonably construed into such a slight. In coming to the General Assembly, the Appellant is doing simply what the Constitution says it may do, and what, as representing the Presbyterian Church in the United States, it was the duty of the Prosecuting Committee to do. The Committee would have subjected themselves, very properly, to censure from this body, if they had taken any other course. If this Court should, in its wise discretion, think that this matter should go to the Synod, the first steps toward that result must be to entertain this appeal. You cannot act or take any act in disposing of this matter until you have first voted to entertain the appeal. Until all preliminary and jurisdictional questions have been settled and jurisdiction has been assumed, this Court cannot make any order as to the disposition of the case. When you have taken the vote to entertain the appeal, then the members of the Court should consider the obligation placed upon them by the Constitution of this Church, to dispose of this case in such manner as will conserve the truth and best protect the interest of the whole Church.

As Commissioners to this General Assembly you are under very solemn obligations and responsibilities. You have not come here to act in obedience to special resolutions of your respective presbyteries, if any such may have been passed, upon questions which may come before this General Assembly.

You have been called to this high court by the mandate of the Constitution of our Church. You are members of a supreme Court of Commissioners, each member bearing, not a resolution of instructions as to how he

shall vote upon questions arising here, but which have not come judicially before your respective Presbyteries.

You bear a solemn commission to this Assembly, which by its express terms authorizes and directs you "to consult, vote, and determine on all things that may "come before that body, according to the principles and "constitution of this Church, and the word of God," and not according to anything else. (Form of Government, Chapter XXII., Section II. Minutes 1877, page 577).

Section XII. of the Form of Government directs that "the General Assembly shall receive and issue all "appeals, complaints, and references that affect the "doctrine or constitution of the Church, which may "be regularly brought before them from the inferior "judicatories, * * * and they shall constitute "the bond of union, peace, correspondence and mu- "tual confidence among all our churches." According to Section V. of the same Chapter, "To the "General Assembly also belongs the power of deciding "in all controversies respecting doctrine and disci- "pline; of reproving, warning, or bearing testimony "against error in doctrine; * * * of suppressing "schismatical contentions and disputations; * * and "the promotion of charity, truth and holiness, through "all the churches under their care." The constitution puts especial responsibility on the General Assembly, respecting all matters which affect the doctrine, discipline, the purity and peace of the Church.

It is very evident then, that the framers of our Book of Discipline and of the Form of Government, intentionally left the way open for passing the intermediate judicatories, so that cases affecting the doctrine and constitution of the Church, might be taken directly to the Assembly, if such a course seemed necessary. When, therefore, we come to the Assembly with our

appeal we are following the constitutional method of procedure, for which precedents are not wanting.

The General Assembly of 1824, in answer to a petition of certain members of the Tammany Street Church of Baltimore, stated: "It is unquestionably the privilege of individuals and members of the Presbyterian "Church, when they think they see the peace, purity, "or prosperity of the Church in danger, either from an "individual, or from an inferior court, to apply to the "General Assembly, in an orderly manner, for redress "and direction." (Minutes 1824, p. 113.)

The Assembly of 1833 (Minutes 1833, p. 396), responding to an overture from the Presbytery of Baltimore in reference to the practice of inferior judicatories in carrying appeals and complaints directly to the Assembly, adopted the following resolution: "That the constitution of our Church is so explicit that "it requires no order of the Assembly in relation to "the case brought to view in this overture." Dr. Moore, in the Presbyterian Digest, 1886, p. 740, states in reference to this deliverance, that "the principle "guiding the Assembly seems to be that where there "is no sufficient reason for passing the next superior "court, the case should go there. But where good "reasons for carrying it directly to the Assembly are "assigned, it will be entertained."

The uniform practice of the General Assembly, in judicial cases, has been to receive appeal coming to it without first going to Synod, if good reasons were adduced.

1. The Assembly of 1816 (Minutes 1816, p. 626) thought it reasonable to receive the appeal of the Rev. George Bourne from the Presbytery of Lexington, on the ground that he *preferred* to be tried by the Assembly rather than by the Synod (Baird, p. 166). And the Assembly of 1818 refused to approve the minutes of the

Synod of Virginia expressing censure on the Presbytery of Lexington for allowing the appeal of Mr. Bourne to pass the Synod. (See Baird, p. 152.)

2. In the Assembly of 1883 (Minutes 1883, p. 617) the Judicial Committee reported that since the Rev. W. W. McLane had not given sufficient reasons for coming direct to the Assembly with his appeal from the decision of the Presbytery of Steubenville, the case and the papers pertaining to it be referred to the Synod of Ohio; but the Assembly declined to adopt the report, and returned it to the Judicial Committee with instruction "to prepare and issue the case before the Assembly." (Moore's Presbyterian Digest, 1886, p. 741.)

3. The Assembly of 1884 stated, in reference to the appeal of the Rev. Jared M. Chavis, from the Presbytery of Atlantic, "that the appellant has shown a sufficient reason for bringing his appeal to the General Assembly, without first going to the Synod of Atlantic." They reversed the decision of the Presbytery, and then, since no testimony had been taken by the Presbytery, referred the case to the Synod, with instructions to take the proper action in the premises. (Minutes 1884, p. 108.)

I call attention to this citation, as it is, I believe, the only *judicial case*, since the revision of our Book of Discipline, which has been sent down by the Assembly to Synod. This exceptional action strongly confirms, if it does not completely establish, our position, that a *judicial case involving doctrine* cannot be sent down by the Assembly to Synod.

The charges in the Chavis case were for alleged immorality—a case in which the decision of Synod is final. In that case the Presbytery had failed in its duty as a trial court. The appeal disclosed such irregularities in the matter of discipline that the General Assembly

sent a special committee to visit the Presbytery of Atlantic, to investigate and do anything in its power to correct the same. The Minutes of the Assembly (1884, p. 108) declare "that the appellant had shown a sufficient reason for bringing his appeal to the General Assembly without first going to the Synod of Atlantic." But as the Form of Government makes the decision of the Synod final in all such cases, the Chavis case was returned to the Synod for action, as should have been done in a case involving *moral* and not *doctrinal* questions.

If this case should be referred by this Assembly, to the Synod of New York, and the majority of that Synod should be unwilling to take up and give full consideration to it, they might be ready to listen to the technical objection that the Synod would have no authority to hear the case, upon the ground that the right of appeal to Synod had been lost, because notice of appeal had not been given within the ten days fixed by Section 96 of the Book of Discipline.

Under these circumstances, the final adjudication of the case would be deferred for two years, because a complaint against the actions of Synod on this purely technical ground would have to be settled by the next Assembly, the case again returned to Synod, and the appeal from Synod's decision would come before the Assembly two years hence.

I only make this as a suggestion as to what is likely to happen in case this Venerable Body should, for any reason, take a course which I hope I have convinced the Commissioners is not warranted by the facts or by the Constitution of the Church.

4. In the New School Assembly of 1839 a motion to send the appeal of Mr. Lewis Tappan from the Third Presbytery of New York to the Synod, was lost, and the appeal was then entertained and issued. (Moore's Digest, 1st Ed., p. 225.)

These examples sufficiently indicate what the practice of the Assembly has been with regard to entertaining appeals which have come to them without having first been before the Synod. Whenever appellants have given good reasons, the Assembly has received the appeal.

The contention that, while an appeal of the defendant may thus be received for special reasons, no such privilege can be accorded to that of a prosecutor, introduces a distinction which is not recognized by the constitution of the Church. The right of appeal is secured to both of the original parties without distinction. We have already shown that in a trial for heresy the Church has far greater interests at stake than any defendant can possibly have, and is liable to suffer vastly more from delay than he. The Presbyterian Church has an equal right, with the humblest as well as with the most distinguished of its members, to make use of all constitutional provisions for the preservation of its interests.

THERE ARE SPECIAL REASONS WHY THIS APPEAL SHOULD BE RECEIVED BY THE ASSEMBLY WITHOUT HAVING FIRST BEEN TAKEN TO THE SYNOD OF NEW YORK.

In addition to the reasons set out in the appeal, the following may be stated:

1. The appeal relates to doctrines which are absolutely fundamental to our system.

The attempt to convince the Church that the doctrines at stake are non-essential or unimportant, and that the contention about them is but a "strife of "tongues," has not been successful. The Christian world, and especially the people of our own communion, very largely consider them vital. From the time when Dr. Briggs delivered his Inaugural Address until now, a strong conviction in all parts of our Church

has been growing stronger that his blow struck at fundamental doctrines.

The sole supremacy of the Holy Scriptures in matters of faith, the veracity, genuineness and trustworthiness of that Scripture, and the question whether the process of redemption is limited to this life, or is to be extended to the world beyond the grave, are involved in this discussion. These are considered vitally important by evangelical Protestants, and particularly by Presbyterians, since they concern not only our creed, but also our entire method of presenting the Gospel. The publication of Dr. Briggs' views has given rise to widespread alarm and contention. It is the duty of the Assembly to receive and issue this appeal for the sake of the purity and peace of the Church.

No Presbytery or Synod can settle these doctrines for the Presbyterian Church; the Assembly alone represents that Church; it is the only court to which this appeal should come. Since the Assembly is not a court of original jurisdiction, it was necessary that the matter should first be passed on by such a court; but now, since it has been tried by a court of original jurisdiction, there is no reason why it should be sent to another inferior judicatory which, under the Constitution, cannot render a final decision.

2. The case is fully ripe for final judgment by this Assembly. If the Commissioners were not acquainted with the merits of the case, there might be reason for delay. But, aside from the fact that the questions involved have been before the Church for more than two years, and have been discussed both by the secular and the religious press, the Defence of Dr. Briggs and the Arguments of the Committee of Prosecution have been put into the hands of all of our ministers, and of many of our elders; there is good reason for concluding that the brethren are well informed on the subjects

involved in the case. Like the children of Issachar, the members of this Assembly have "understanding " of the times, to know what Israel ought to do."

3. It is imperatively necessary that a final decision in this case be reached at the earliest possible date. This is requisite alike for the purity and peace, and the prosperity and usefulness of the Church. Debate, contention, and uncertainty should not be protracted any longer than is absolutely necessary. Only a little while ago, all seemed to be agreed, respecting this matter.

Not a few of those urging the now famous "peace and work" plea were so deeply impressed with the fact that this conflict interferes seriously with the peace and work of our churches, that they desired the matter to be dropped immediately after the Presbytery of New York had rendered its decision in this case.

We did not agree with them in detail, believing that it would be better to wait four months longer, bring the case to this Assembly, and obtain a decision which would be more potential in allaying the unrest and disquiet of our people than that of the Presbytery of New York could possibly be.

But we agree with them as to the necessity of disposing of this matter finally and authoritatively as soon as possible; and since the Assembly alone can render a final and authoritative decision on questions of this kind, we ask it to render that decision here, and at this time.

Consistency is not the distinctive quality of those brethren, who less than four months ago insisted with intense earnestness that, for the sake of peace, work and liberty, the discussion should cease at once. They now insist with a zeal no less earnest, that, to guard the interests of our beloved Church, the case should be delayed another year, and first be sent to the Synod

of New York. If their judgment of four months ago was correct, then their present judgment cannot be, for no evident change of sentiment in either Church or defendant has taken place since that time.

But why this determined purpose to keep this case from coming before the General Assembly, and to send it to the Synod? There would be reason in this were it a case respecting morality, for then the Synod would have the constitutional right to make a final decision. It cannot do so in this case, since it involves the doctrines of the Church, which the Assembly only can finally decide. This shows that there is no desire, on the part of those just referred to, to secure a settlement of the matter at issue by the only body which constitutionally can settle it for the Church. The prerogatives and privileges of our judicatories have been mentioned; but the court, whose prerogatives, privileges and dignity have been attacked in connection with this case, is not the Synod of New York, but the General Assembly itself.

So earnest is the attempt to keep this case from coming before the Assembly for decision, that the disruption of the Church is threatened if the Assembly should entertain and issue it. But this threat argues on the one hand, conscious weakness on the part of those who make it, and on the other, a deliberate intention to unduly influence the Assembly so as to prevent it from giving an honest expression of opinion.

A wise and manly settlement of this case by the Assembly will purify and strengthen our Church and be the beginning of a long period of peace and prosperity.

4. This case involves the legal construction of the ordination vow of every minister, elder and deacon in our Church; it involves what they may believe and teach as the faith of the Church, under the terms of that vow. The Presbytery of New York has decided

in the case of Dr. Briggs that a Presbyterian minister, elder or deacon may believe and teach, in harmony with that vow, certain doctrines. The Presbytery of Cincinnati has held in the case of Dr. H. S. Smith that certain of these views cannot be taught without a violation of the ordination vow. What the faith of the Church, as to the fundamental doctrines involved in this case, is, and what is embraced within the terms of the ordination vow, and the liberty in teaching allowed by the Church, can only be determined by the General Assembly.

The importance of an immediate decision of these matters will be recognized at once, when we consider that during the coming year at least two hundred and fifty ministers will be received into our Church and from three to five thousand elders and deacons elected and ordained. Those ministers, elders and deacons who take the ordination vow, according to the decision of the New York Presbytery in this case, have a right to believe, until that decision is reversed, that they can hold the views of Dr. Briggs and teach them without transgressing the limits of liberty allowed under our Constitution to scholarship and opinion.

Is it fair or just to leave the terms of the ordination vow and the doctrines involved in this case, unsettled for another year, for this would be the result of not entertaining the appeal or, after it has been entertained, sending it to the Synod? Would it be right or honest to permit ministers, elders and deacons to enter the Church during the next year, believing, as they would have a right to believe, with the judgment of the New York Presbytery unreversed, that, under the terms of their ordination vow, they can believe and teach the views held by Dr. Briggs? Then, in case the Assembly of 1894 should reverse the judgment of New York Presbytery, it would place those who have become

ministers, elders and deacons in the position of being compelled either to renounce their views, or to retire from the Church, or subject themselves to discipline to expel them from the Church.

The Church, in all its agencies, must go on, it must license more ministers, elect and ordain more elders and deacons. If no other consideration existed than this, it would be of paramount importance. Fairness and justice to those whom the Church invites into official station would seem to require this Judicatory to entertain this appeal and determine what the Church holds upon the fundamental questions at issue.

5. As a final reason why the Assembly should entertain this appeal now, we urge that great and widespread injury is certain to come from protracted delay. It will tend to unsettle faith, especially among our young people; it will injuriously affect the training of our young men for the ministry, and will result in the spread of false doctrines.

The Presbytery of New York, in the final judgment, says: "There are truths and forms with regard to "which men of good character may differ." No one disputes that. But the statement necessarily implies that there are also truths and forms in regard to which good men, especially ministers of the Presbyterian Church, should not differ; and the the question is whether or not the truths and forms contained in this case are of that kind. The great majority of Presbyterians believe that they are. The verdict of the Presbytery of New York confirms that belief rather than otherwise; for, while they acquit him, they distinctly disapprove the critical and theological views of Dr. Briggs, for which he has been put on the defence. Why disapprove these truths and forms if Presbyterian Ministers and elders may differ in regard to them?

If the doctrines presented by Prof. Briggs be erroneous, as we verily believe, then, through delay, "heretical opinions" are sure to "gain ground," and our Church will be affected injuriously through the continuance of uncertainty and doubt, and of suspicion and strife.

In closing, Moderator, let me thank you and the General Assembly for your indulgent attention to this long and sometimes technical argument. The laws of our Book may be imperfect, for they are human laws; our interpretation of the law may be defective, because it is a human interpretation; but these laws and their interpreters may be the means of advancing the Kingdom of God. And, having been faithful to the rights and laws of His Church on earth, you shall doubtless see the effects of this fidelity in that heavenly empire, the realm of glory, to which He will one day summon His elect.